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January 21, 2016

Via Certified Mail, Return Receipt Requested

Roland J. Fiore
President
South County Sand & Gravel Co., Inc.
145 Fiore Industrial Drive
Wakefield, RI 02879

RECEIVED

JAN 25 2016

OFFICE OF THE REGIONAL ADMINISTRATOR

Michael A. Kelly, Esq.
Registered Agent
South County Sand & Gravel Co., Inc.
128 Dorrance Street, Suite 300
Providence, RI 02903

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation (CLF)¹ hereby gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Clean Water Act (the Act), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter (the Notice) constitutes notice pursuant to 40 C.F.R., part 135, of CLF's intention to file suit in United States District Court for the District of Rhode Island seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice.

The subject of this action is two-fold. First, South County Sand & Gravel Co., Inc. (hereafter as South County) is discharging stormwater directly associated with a construction sand and gravel facility located at 145 Fiore Industrial Drive, Wakefield, RI 02879 (the Facility), to the waters of the United States without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second, South County has failed to obtain coverage under any Clean Water Act permit including

¹ CLF is a not-for-profit 501(C)(3) organization dedicated to the conservation and protection of New England's environment. Its mission includes the conservation and protection of the many uses of the waters in and around the Pawcatuck-Wood watershed for, among other things, fishing, recreation, scenic/aesthetic and scientific purposes. CLF's membership includes people who live in or near the Pawcatuck-Wood watershed, and use and enjoy the watershed for recreational, aesthetic, and/or scientific purposes. The interests of CLF's members are adversely affected by the Facility's discharges of stormwater pollution to the receiving waters without a permit and in violation of the Clean Water Act.

the Multi-Sector General Permit (MSGP) issued under the Rhode Island Pollutant Discharge Elimination System² (RIPDES) by the state of Rhode Island for industrial sources of polluted stormwater runoff, and failed to comply with the specific requirements of any such permit, in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

BACKGROUND

Rocky Brook and its tributaries (Waterbody ID RI0010045R-04) comprise approximately four miles of waterway in the Pawcatuck-Wood interstate watershed. A segment of Rocky Brook runs along the western perimeter of South County site. Saugatucket Pond (Waterbody ID RI0010045L-01) is a 40.684-acre waterbody also located in the Pawcatuck-Wood watershed. Saugatucket Pond approaches the north western corner of the South County site. South County discharges into both Rocky Brook and Saugatucket Pond at multiple points. Downstream of discharge points associated with South County's facility and operations, Rocky Brook and Saugatucket Pond confluence and outlet into the Saugatucket River (Waterbody ID RI0010045R-05B), which outlets into Point Judith Pond and thereafter into the waters of Block Island Sound and the Atlantic Ocean. The Environmental Protection Agency (EPA) has designated Rocky Brook³ and Saugatucket Pond⁴ as habitats for "fish, shellfish, and wildlife protection and propagation, and recreation" and the Saugatucket River⁵ as a habitat for "fish, shellfish, and wildlife protection and propagation, aquatic life harvesting, and recreation."

EPA has designated Rocky Brook and its tributaries as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for failure to meet minimum water quality standards.⁶ Rocky Brook (Waterbody ID RI0010045R-04) is impaired for pathogens, namely fecal coliform.⁷ Stormwater and urban-related runoff have been identified as probable sources of impairments in Waterbody RI0010045R-04.⁸

² The Rhode Island MSGP is available at <http://www.dem.ri.gov/programs/benviron/water/permits/ripdes/pdfs/msgp.pdf>.

³ See 2014 Waterbody Report for Rocky Brook & Tributaries, available at http://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=RI0010045R-04&p_cycle=2014.

⁴ See 2014 Waterbody Report for Saugatucket Pond, available at http://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=RI0010045L-01&p_list_id=RI0010045L-01&p_cycle=2014.

⁵ See 2014 Waterbody Report for Saugatucket River & Tributaries, available at http://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=RI0010045R-05B&p_list_id=RI0010045R-05B&p_cycle=2014.

⁶ See *supra* note 3.

⁷ *Id.*

⁸ See 2014 Waterbody Report for Rocky Brook & Tributaries, available at http://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=RI0010045R-04&p_cycle=2014.

EPA has designated Saugatucket Pond as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for failure to meet minimum water quality standards.⁹ Saugatucket Pond (Waterbody ID RI0010045L-01) is impaired for nutrients, namely phosphorus, and impaired biota, namely benthic macroinvertebrates.¹⁰ Stormwater is a possible source of impairments in Waterbody RI0010045L-01.

Downstream of the South County site, Rocky Brook and Saugatucket Pond confluence and outlet into the Saugatucket River. The Saugatucket River is impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for failure to meet minimum water quality standards.¹¹ The Saugatucket River (Waterbody ID RI0010045R-05B) is impaired for metals (namely iron), pathogens (namely fecal coliform), and impaired biota (namely benthic macroinvertebrates).¹² Stormwater and upstream outflows from Superfund sites and landfill activity are cited as probable sources of impairments in Waterbody RI0010045R-05B.

Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt.¹³ Industrial activities, such as material handling and storage, equipment maintenance and cleaning, industrial processing, and other operations that occur at industrial facilities, may be exposed to stormwater.¹⁴ Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.¹⁵

South County is required to apply for coverage under a Clean Water Act discharge permit such as the MSGP in order to discharge lawfully. Since at least 2001, South County has been required to apply for coverage under the MSGP by filing a Notice of Intent (“NOI”). On August 15, 2013, after expiration of the prior MSGP, the Rhode Island Department of Environmental Management issued a new MSGP requiring all covered facilities to file an NOI for coverage under the 2013 permit.¹⁶

South County has failed to obtain coverage under the MSGP or any other valid authorization, at any time. Therefore, South County is operating in violation of the Clean Water Act.

⁹ See *supra* note 4.

¹⁰ *Id.*

¹¹ See *supra* note 5.

¹² *Id.*

¹³ See 40 C.F.R. § 122.26(b)(13).

¹⁴ See 40 C.F.R. § 122.26(b)(14).

¹⁵ See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

¹⁶ See MSGP I(C).

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

South County is the person, as defined by 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. South County has operated the Facility since at least 1952, currently advertises as the operator of the Facility, and is registered with the Rhode Island Secretary of State Division of Business Services as the operator of the Facility.¹⁷ South County and its agents and directors, including but not limited to Roland J. Fiore, president, have operational control over the day-to-day industrial activities at this Facility. Therefore, they are responsible for managing stormwater at the Facility in compliance with the CWA.

LOCATION OF THE ALLEGED VIOLATION

The violations alleged in this Notice have occurred and continue to occur at the construction sand and gravel facility (SIC 1442) located at 145 Fiore Industrial Drive, Wakefield, RI 02879.

ACTIVITIES ALLEGED TO BE VIOLATIONS

South County has engaged and continues to engage in “industrial activities,” and its operations fall under SIC 1442, within the meaning of 40 C.F.R. §§ 122.26(b)(14)(vi).¹⁸ Because the Facility has a primary SIC Code of 1442 and discharges stormwater associated with industrial activity, South County is required to apply for, obtain coverage, and comply with the requirements of a discharge permit such as the MSGP.

Activities at the Facility include, but are not limited to: storing, moving, and processing sand, gravel, and other materials outside or otherwise exposing them to the elements; operating and storing heavy machinery and equipment outdoors; and driving vehicles on and off the Facility thereby tracking pollutants off-site. All of these activities at the Facility have contaminated the site with industrial pollutants.

Sand, gravel, and other materials; machinery and equipment; and vehicles at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over the sand and gravel piles; machinery and equipment; and vehicles, picking up dust, total suspended solids (TSS), total dissolved solids (TDS), fines, diesel/gas fuel, oil, heavy metals, trash, and other pollutants associated with the Facility’s operations. The polluted runoff is then conveyed off-site into waters of the United States.

¹⁷ See

<http://ucc.state.ri.us/CorpSearch/CorpSearchSummary.asp?ReadFromDB=True&UpdateAllowed=&FEIN=000013020>.

¹⁸ See MSGP, Appendix B: Facilities and Activities Covered, Table B-1. Construction Sand and Gravel (SIC 1442) facilities are subject to the requirements of the MSGP for stormwater discharges.

In addition, to the extent that South County uses water in its industrial processes, including but not limited to washing gravel and crushed stone and spraying on rock crushing and sorting machinery, that water becomes “process wastewater” (also referred to as “process water”) as defined in 40 C.F.R. § 122.2.¹⁹ Discharges of process wastewater are not covered under the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity. Discharges of process wastewater must instead be covered under an individual RIPDES permit. CLF intends to pursue claims related to South County’s unpermitted discharges of process water to waters of the United States.

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED

The CWA prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid discharge permit.²⁰ South County discharges stormwater associated with its industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), from its facility into waters of the United States. Because South County has not obtained coverage for these stormwater discharges under the MSGP or an individual RIPDES permit, it is illegally discharging stormwater without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).²¹ By failing to apply for and comply with the specific requirements of the MSGP, South County is in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

a. South County is discharging stormwater to waters of the United States without a permit.

South County is an industrial discharger with a primary SIC Code of 1442, which means that pursuant to Section 402(p) of the Act, South County is obligated to apply for coverage under the MSGP or obtain other legal authorization. Because South County has operated and continues to operate without a permit under Section 402(p), South County is in violation of Section 301(a) of the Act.

In addition, during storm events, South County’s industrial activities at its Facility have resulted in a “discharge of pollutants” within the meaning of 33 U.S.C. § 1362(12) and “stormwater discharge associated with industrial activity” within the meaning of 40 C.F.R. § 122.26(b)(14), from its Facility on each and every day that there has been a measurable precipitation event of above 0.1 inches. There have been many such storm events since 1952. The Facility is generating

¹⁹ Defining “Process wastewater” as “any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.”

²⁰ 33 U.S.C. § 1311(a).

²¹ See 33 U.S.C. § 1362(12); 40 C.F.R. § 122.2; MSGP, Appendix A: Definitions, Abbreviations, and Acronyms (defining the term “discharge of a pollutant” as “any addition of any ‘pollutant’ to ‘waters of the State’ from any ‘point source’”).

and conveying pollutants from at least the following “point sources”: vehicles and equipment left outdoors; vehicles driving on and off the Facility; and channels, ditches, discrete fissures, containers, and other conveyances to waters of the United States.²² Rocky Brook and Saugatucket Pond are considered “waters of the United States” as defined in 40 C.F.R. § 122.2, and therefore is a “navigable water” as defined in 33 U.S.C. § 1362(7). The Facility is discharging this industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

b. South County is violating the Clean Water Act by failing to obtain coverage and failing to comply with the requirements of the MSGP.

South County is violating 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1), by failing to apply for, obtain coverage, and comply with the requirements of the MSGP.²³ The Facility has a primary SIC Code of 1442 and must obtain coverage under the MSGP for its stormwater discharges and for stormwater discharges from any co-located industrial activities.²⁴ South County’s failure to obtain coverage and comply with the permit conditions is in violation of the MSGP and 33 U.S.C. § 1342(p) of the Clean Water Act.²⁵

1) South County Must Develop and Implement a Storm Water Management Plan (SWMP).

As a prerequisite to obtaining coverage under the MSGP, South County must prepare a Storm Water Management Plan (“SWMP”).²⁶ The SWMP must include, but is not limited to, the following: information related to a company stormwater pollution prevention team, a site description and general location map, a summary of pollutant sources, a description of control measures, and schedules and procedures pertaining to control measures and monitoring.²⁷ South County has failed to develop a SWMP in accordance with the MSGP’s requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

²² These discharges constitute “point sources” as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2. Under 40 C.F.R. § 122.2 and MSGP Appendix A, “discharge of a pollutant” includes “surface runoff which is collected or channeled by man.”

²³ MSGP parts I and X.

²⁴ See MSGP part VIII(J).

²⁵ A thorough search of EPA’s facility databases shows no records and therefore no Clean Water Act permit coverage for South County. See EPA Enforcement and Compliance History Online (ECHO), <http://echo.epa.gov/facilities/facility-search>; EPA Permit Compliance System (PCS) and Integrated Compliance Information System (ICIS), <http://www.epa.gov/enviro/facts/pcs-icis/search.html>. By contrast, searches of these databases for several other salvage yards throughout Rhode Island showed permit coverage.

²⁶ See MSGP part V.

²⁷ See MSGP part V(F).

2) South County Must Submit to the Rhode Island Department of Environmental Management a Complete Notice of Intent to be Covered under the MSGP.

To be eligible to discharge under the MSGP, South County must submit a complete Notice of Intent (“NOI”) to the Director of the Rhode Island Department of Environmental Management (RIDEM).²⁸ South County has failed to prepare and file an NOI meeting all applicable requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

3) South County Must Take Control Measures and Meet Water-Quality Effluent Limitations.

To be eligible to discharge under the MSGP, South County must select, design, install, and implement control measures (including best management practices) to prevent polluted stormwater discharges from reaching nearby waterbodies.²⁹ South County must address the selection and design considerations set forth in the MSGP, meet the non-numeric effluent limitations established by the MSGP, and meet limits contained in applicable permit effluent limitations guidelines.³⁰ These control measures must be in accordance with good engineering practices and manufacturer’s specifications.³¹ If the control measures are not achieving their intended effect of minimizing pollutant discharges, the permittee must modify these control measures as expeditiously as practicable.³² South County has failed to cover the materials and operations that may result in polluted stormwater runoff. South County has not implemented required control measures in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

4) South County Must Conduct Routine Facility Inspections.

To be eligible to discharge under the MSGP, South County must conduct routine inspections by qualified personnel, with at least one member of the Facility’s stormwater pollution prevention team participating, of all areas of the Facility where industrial materials or activities are exposed to stormwater.³³ Routine inspections must be conducted at least quarterly but in many instances monthly inspections are most appropriate.³⁴ These inspections must occur when the Facility is in operation.³⁵ The schedule of these inspections must be included in the Facility’s SWMP.³⁶ South

²⁸ See MSGP part I(C)(1)(a).

²⁹ See MSGP part II(A).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ See MSGP part IV(A).

³⁴ *Id.*

³⁵ *Id.*

County has failed to conduct the required routine inspections in accordance with the MSGP's requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

5) South County Must Comply with the Required Monitoring and Sampling Procedures.

To be eligible to discharge under the MSGP, South County must collect and analyze stormwater samples and document monitoring activities consistent with the procedures in the MSGP.³⁷ The MSGP requires different types of analytical monitoring (one or more of which may apply) including semiannual benchmark monitoring, annual effluent limitations guidelines monitoring, and other monitoring as required by the Director.³⁸ An operator must monitor outfalls including each outfall identified in the SWMP covered by a numeric effluent limit.³⁹ Required monitoring must be performed after stormwater events that result in an actual discharge on a required schedule.⁴⁰ Furthermore, because Rocky Brook, Saugatucket Pond, and the Saugatucket River are "impaired waters" under 33 U.S.C. § 1313(d), South County must monitor for all pollutants for which Rocky Brook, Saugatucket Pond, and the Saugatucket River are impaired.⁴¹ All monitoring data collected under the Permit must be reported to RIDEM no later than 31 days after the last day of the monitoring period for all monitored outfalls for the reporting period.⁴² South County has failed to conduct the required monitoring under the MSGP and has failed to submit the required monitoring reports to RIDEM in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

6) South County Must Carry out Required Reporting and Recordkeeping.

South County must maintain and submit any and all required monitoring data.⁴³ Such monitoring data includes the following: an annual report to RIDEM which includes the Facility's findings from the annual comprehensive site inspection and any documentation of correction actions;⁴⁴ an Exceedance Report to the Department no later than 30 days after receipt of the lab results if any of the follow-up monitoring shows any exceedances of a numeric effluent limit;⁴⁵ and any other required reports under the MSGP.⁴⁶ South County has failed to maintain the required records and

³⁶ *Id.*

³⁷ See MSGP part VI.

³⁸ See MSGP part VI(B).

³⁹ See MSGP part VI(A)(1).

⁴⁰ See MSGP part VI(A)(3).

⁴¹ See MSGP part VI(B)(3).

⁴² See MSGP part VII(A).

⁴³ See MSGP part VII(A).

⁴⁴ See MSGP part VII(B).

⁴⁵ See MSGP part VII(C).

⁴⁶ See MSGP part VII(D).

failed to submit all required monitoring data under the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

7) South County Must Comply with the Requirements of MSGP Subpart J.

South County must also comply with the sector-specific requirements contained in Subpart J of the MSGP.⁴⁷ Subpart J requires construction sand and gravel facilities to implement additional technology-based effluent limits,⁴⁸ meet additional SWMP and inspection requirements,⁴⁹ and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to construction sand and gravel facilities.⁵⁰ South County has failed to comply with the additional requirements of Subpart J of the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

DATES OF VIOLATION

Each day on which South County operates its Facility without general permit coverage or discharges stormwater from the Facility without a permit is a separate and distinct violation of Section 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

Each day on which South County operates its Facility without individual permit coverage or discharges process water from the Facility without a permit is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

South County has discharged stormwater without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), on every day, since at least May 1, 2006, on which there has been a measurable precipitation event.

Every day, since at least May 1, 2006, on which South County has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of the MSGP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A).

Every day, since at least May 1, 2006, on which South County has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of an individual RIPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

⁴⁷ See MSGP, Appendix B, Table B-1, Sector J; MSGP part VIII(J).

⁴⁸ See MSGP part VIII(J)(5).

⁴⁹ See MSGP part VIII(J)(6) & (7).

⁵⁰ See MSGP part VIII(J)(8).

These violations are ongoing and continuous, and barring a change in the stormwater management controls and process water controls at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

RELIEF REQUESTED

South County is liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects South County to a penalty up to \$32,500 per day for each violation which occurred between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for each violation that occurred after January 12, 2009.⁵¹ CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring South County to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

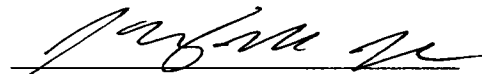
Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with matter.

⁵¹ 40 C.F.R. § 19.2.

CONCLUSION

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Max Greene within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,



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